

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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MARIO ESPINOZA,

Plaintiff,

v.

STATE OF NEVADA, *et al.*,

Defendants.

Case No. 2:23-cv-01038-MMD-DJA

ORDER

Plaintiff Mario Espinoza brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated. (ECF No. 1-1.) This Court ordered Plaintiff to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before September 11, 2023, and then later granted Plaintiff an extension of time until October 25, 2023. (ECF Nos. 3, 4, 5.) The Court warned Plaintiff that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. (ECF No. 5 at 2.) That deadline expired and Plaintiff did not file a fully complete application to proceed *in forma pauperis*, pay the full \$402 filing fee, or otherwise respond.

**I. DISCUSSION**

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of L.A.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep

1 court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir.  
2 1987) (dismissal for failure to comply with court order). In determining whether to dismiss  
3 an action on one of these grounds, the Court must consider: (1) the public's interest in  
4 expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk  
5 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their  
6 merits; and (5) the availability of less drastic alternatives. *See In re Phenylpropanolamine*  
7 *Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

8 The first two factors, the public's interest in expeditiously resolving this litigation  
9 and the Court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's  
10 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal  
11 because a presumption of injury arises from the occurrence of unreasonable delay in filing  
12 a pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542  
13 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of  
14 cases on their merits—is greatly outweighed by the factors favoring dismissal.

15 The fifth factor requires the Court to consider whether less drastic alternatives can  
16 be used to correct the party's failure that brought about the Court's need to consider  
17 dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining  
18 that considering less drastic alternatives *before* the party has disobeyed a court order  
19 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th  
20 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that  
21 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's  
22 order as satisfying this element[.]” *i.e.*, like the “initial granting of leave to amend coupled  
23 with the warning of dismissal for failure to comply[.]” have been “eroded” by *Yourish*).  
24 Courts “need not exhaust every sanction short of dismissal before finally dismissing a  
25 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779  
26 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and  
27 unless Plaintiff either files a fully complete application to proceed *in forma pauperis* or  
28 pays the \$402 filing fee for a civil action, the only alternative is to enter a third order setting

1 another deadline. But the reality of repeating an ignored order is that it often only delays  
2 the inevitable and squanders the Court's finite resources. The circumstances here do not  
3 indicate that this case will be an exception: there is no hint that Plaintiff needs additional  
4 time or evidence that he did not receive the Court's order. Setting another deadline is not  
5 a meaningful alternative given these circumstances. So the fifth factor favors dismissal.

6 **II. CONCLUSION**

7 Having thoroughly considered these dismissal factors, the Court finds that they  
8 weigh in favor of dismissal.

9 It is therefore ordered that this action is dismissed without prejudice based on  
10 Plaintiff's failure to file a fully complete application to proceed *in forma pauperis* or pay  
11 the full \$402 filing fee in compliance with this Court's July 13 and September 12, 2023,  
12 orders.

13 The Clerk of Court is directed to enter judgment accordingly and close this case.  
14 No other documents may be filed in this now-closed case. If Plaintiff wishes to pursue his  
15 claims, he must file a complaint in a new case.

16 DATED THIS 3<sup>rd</sup> day of November 2023.

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MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE